

A REPEAL

What It Means

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Preface

As I have said elsewhere, "the momentous issues involved" in the discussions carried on in this brochure, "should have been handled by abler men. But in the journey of life, no one knows what one may meet on the roadside." It was a mere accident that this onerous task fell on me, and I have not shirked it. In the course of a conversation with an eminent retired High Court Judge, I referred to this subject, and he at once said—"There ought to be a whirl-wind campaign for it, all over India." I am weighed down with age and circumstances to undertake anything further than this publication. I have nothing to fear from the coming events which are already casting their shadows, for by the time they act and react, I shall be out of this world. It is for the coming generation who aspire to build up the destiny of this hapless country of mine, to feel, to strive, to seek, to find, and not to yield. If one thinking young man, after perusing the following pages, feels there is danger ahead, and he must devote his energies at least to warn his countrymen, my efforts will have been amply rewarded.

78, Beadon Street,

Calcutta

Narendra Nath Set.

The 7th April 1936.

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2. On the 18th July 1935, Lord Meston moved in the House of Lords, to insert what is now Section 301 of the Government of India Act. He said :—

“My Lords, the two archaic provisions which this proposed new clause seeks to repeal are practically identical in form, though not in date. They purport to preserve the rights of the fathers of families under the Hindu or Mahomedan law of that date, and they prescribe that any act done “by them in consequence of the rule or law of caste” shall not be considered to be crime even if it be an offence under the law of England. These provisions are certainly obsolete, but apparently they have never been repealed. It is suggested that as an appeal to them might be awkward, the present opportunity should be taken to get rid of them.”

Amendment moved :—

The Marquess of Zetland :—“My Lords, I agree with the noble Lord. I think there is a good reason for this amendment, and I am prepared to accept it.”

On question, Amendment agreed to.

3. Earlier on the same day, there were a few questions in the House of Lords about the Anglo-Indian community and their rights in the educational sphere and in the Railway Departments. Lord Lloyd rightly pleaded for them.

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"What did Sir Austen Chamberlain say? He said that when we went to India, we did not find the Anglo-Indian Community; we created it; that therefore they are of our blood and we must protect them."

"We did create them; they are our own blood they are the result of our civilisation there."

The origin of the Anglo-Indian Community is an archaic question, but the House gave sympathetic consideration to it, and rightly too. Lord Lloyd referred to certain other general principles which are as true for the Anglo-Indian Community as for any other Community in India :—

"I do not think that the Anglo-Indian Community would claim, neither certainly would the European Community claim, any superiority over any other community. It is not that. But that they do claim a communal identity, and where a specific protection has been accorded to the children of any community, it is only natural that they should decline to deprive those children of it by sharing the privilege with others who are outside the community It is generally accepted everywhere that where a child is legitimate, it is through the male parentage that he claims his nationality, his general civic rights, or whatever it may be." But later on in the same sitting these obvious

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principles were not at all worth the considerations of the Lords when the repeal was proposed. The whole proceedings are given above,

THE RELEVANT SECTIONS

4. Let us now look at the relevant sections. Section 301 of the Government of India Act is this—
"Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed,"

And the repealed Sections are :—

Section 18 of the East India Company Act 1780 is—

The authority of fathers and masters of families among the natives to be preserved, etc--

And in order that regard should be had to the civil and religious usages of the said natives, be it enacted, that the rights and authorities of fathers of families and masters of families according as the same might have been exercised by the Gentu or Mahommedan law shall be preserved to them respectively within their said families ; nor shall any acts done in consequence of the rule and law of caste respecting the members of the said families only be held and adjudged a crime, although the same might

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not be held justifiable by the laws of England.
Section 12 of the East India Act 1797 is :—

Rights of fathers and masters of families to be preserved.

And in order that due regard may be had to the civil and religious usages of the natives, be it enacted that the rights and authorities of fathers of families and masters of families, according as the same may be exercised by the Gentu or Mahommedan law, shall be perserved to them within their families respectively, nor shall the same be violated or interrupted by any of the proceedings of the said courts, nor shall any act done in consequence of the rule or the law of caste so far as respecting the members of the same family only, be deemed a crime, although the same may not be justifiable by the laws of England.

REASONS CONSIDERED

5. The Mover of the Amendment has characterised the two sections as 'archaic' and 'obsolete'. It is for the Hindus and the Moslems to say whether this guarantee is archaic and obsolete. That the Moslems feel strongly for the Koran is evidenced by repeated incidents of present-day history, and the Hindus have demonstrated their attachment to their own law during the recent agitation about Temple

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Entry. The Government of India recognises these evidences with regard. Let us now see how the Parliament and the Judiciary have hitherto regarded them.

PARLIAMENTARY HISTORY

6. In the year 1896 Parliament revised their statutes and by the Short Titles Act passed in that year, the statute of 1780 was given the title of the East India Company Act and that of 1797 as the East India Act. In the year 1915 when the consolidated Government of India Act was passed, these two sections were kept intact although all other portions of the said two statutes were repealed. These two sections were similarly kept intact later when the Government of India Act of 1919 was passed.

Again in 1927, when Parliament passed the Statute Law Revision Act these two sections were duly considered and retained as they were.

JUDICIAL NOTICE

7. Now as to Judicial notice, we find from a judgment of 1801, "Some particular parts of our civic code are not applicable to the religious and social habits of the Mahommedan or the Hindoo natives; and that they are, on that account allowed to remain under their own laws."—[3 Robinson's Admiralty Report 12, (81)].

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8. We find from Morley's Digest, (1850) Introduction, pages clix and clxxi—

"Sec 18 (the above) of the same statute emphatically preserved to the natives their laws and customs" and Section 12 (the above) re enacted the 18th Section extending it to Madras and Bombay,

9. In 1863, in the case of *Advocate-General versus Rani Surnomoyee* [9 M. I. A. 391 (421, 429-30)] the point arose :—

Mr. Bovill, Q. C. and Mr. Cave, argued :—

"And section 18 of that statute expressly enacted that the civil and religious usages of the natives were to be respected."

Lord Kingsdown acceded to this and observed:—

"These principles are too clear to require any authority to support them. ... But if the English laws were not applicable to the Hindoos on the first settlement of the country, how could the subsequent acquisition of the rights of sovereignty by the English Crown make any alteration?"

10. The principles of these two sections were in 1871 fully laid down by Lord Justice James in *Skinner versus Orde* [14 M. I. A. 309 (322, 323)]

"The course of decisions in the English and Irish Courts of Chancery has been such as to lay it down as a matter of positive law of the Court that in the

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matter of religious education great, and in the absence of controlling circumstances,* paramount weight should be given to the expressed and implied wishes of the deceased father. .. "In India, however, all, or almost all, the great religious communities of the world exist, side by side, under the impartial rule of the British Government. While Brahmin, Buddhist, Christian, Mahomedan, Parsees and Sikh are one nation, enjoying equal political rights, and having perfect equality before the Tribunals, they co-exist as separate and very distinct communities having distinct laws affecting every relation of life—the law of husband and wife, parents and child, the descent, devolution and disposition of property are all different, depending in each case, on the body to which the individual is deemed to belong, and the difference in religion pervades and governs all domestic usages and social relations. From the very necessity of the case, a child in India, under ordinary circumstances, must be presumed to have his father's religion and his corresponding civil and social status."

11. The next case in importance is the judgment of Mahmood, J. in *Mashar Ali, versus Buth Singh* [(1884) (F.B.) I.L.R. 7 All. 297 (302)] :—

"The provisions contained in Section 24 of the Bengal Civil Courts Act—constitutes one of the most

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important guarantees given to the people of India by the British rule, and they date as far back as the beginning of the British rule itself, for they found legislative enactment in the year 1780 when the first Regulation for the administration of justice was enacted by the Bengal Government, they have been repeatedly confirmed by Acts of Parliament, and have ever since remained in the Statute book of British India."

• The Regulation of 1780 was the prelude to the Sections 13 and 12 (vide Morley's Digest).

12. In *Chetti versus Chetti* (1909) Probate Division, 67 (73) Sir Gorell Barnes observes:—

"The recognition accorded to the Hindoo Law and usages in British India may, so far as the researches which I have been able to make enable me to state, be gathered from certain statutes, charters and regulations an account of which up to 1850 is to be found in Morley's Analytical Digest (He refers to these two sections.)

Thus, we find that the Parliament maintained these two sections upto 1927, and the Judiciary referred to them up to 1909.

13. An argument may be advanced that in view of various legislative enactments and judicial decisions from 1850 modifying the personal laws, the norms of personal rights have undergone substantial change, and therefore it is far better that the new

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legislature be given a clean slate. To that argument the first answer would be that the presence of the Statutes of the 18th century did not hamper them. The second point in reply would be that how far there have been deviations and in what direction is obviously a subject of very extensive investigation. And the third point of view is that the deviations have always been recognised as special cases, and not to do away with the values of Indian life ; that is to say, wrongs done if any, have not been such as to justify the wrongs. On a careful scrutiny of each of the instances of such deviation, it will be found that from the point of view of the Hindu Law, except the Act of 1850, and the three Acts of 1913, 1925 and 1929, no other Act or decision of Court, although affecting the principles, materially affected the values of Hindu life so as to do away with the religious sanctions. And in fact, with regard to prejudicial affections, there was scope for mending them in view of the respect hitherto bestowed both by the Parliament and the Judiciary.

14. Therefore, there is no fair justification for the repeal of the two sections 18 and 12 of those two old statutes, and in all fairness to the two great communities, they should be reinstated. That is to say, the repeal should be repealed.

OTHER LEGISLATIVE PROVISIONS

15. I have not overlooked the other Acts on the

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subject passed by the legislatures of India. For ready reference, I give below the list :—

Bombay - Regulation IV of 1827

Central Provinces Laws - Act XX of 1875

Oudh Laws - Act XVIII of 1876

Punjab Laws - Act IV of 1872

Regulation VII of 1901,

Bengal, N. W. Provinces, Assam - Act XII of 1887

Madras -- Act III of 1873

-- Regulation II of 1802.

16. All these enactments were passed for the guidance of the Courts in deciding personal rights according to the personal laws of the Hindus and the Mahommedan, but they are all subject to the legislative enactments of Indian legislatures. When the guarantee which is contained in the two sections now repealed is removed, the fundamental safeguard and the respect for it which has been maintained hitherto not to trifle with it, are gone. Now, any one can bring any law consistent or inconsistent with the Hindu or Mahommedan law, and can have it passed with the majority of votes.

17. Under Sections 12 (1) (c), 52 (1) (b) and 326 (1) (c) of the Government of India Act, 1935, the minorities may get occasional relief under the "Special Responsibilities" of the Governor, but it is open to question whether the Hindu personal laws will

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ever be considered as falling within any of the "Special Responsibilities," and most probably they may not.

LORD MESTON

18. A little examination about the move is relevant. Lord Meston has introduced this repeal. We need not surmise what his other views are with regard to the necessity for this repeal. But we think we know some facts about him,

(i) On the 7th March 1919 Lord Meston (then Sir James Meston) from his seat in the Indian Legislative Council said :—

"We have made mistakes, we have made a grave mistake, I believe, in thinking, as we did, that we could leave the people of India to themselves to work out their own moral and social development." The assumption is that the Indians themselves would not and cannot care for "their own moral and social development".

(ii) I have not kept notes, but I have marked with misgivings, that Lord Meston has carried on a campaign against orthodox Hinduism all these years, culminating in the offer to Mr. Gandhi in an article "Sunshine and Cloud in India" reproduced in the *Advance* published in Calcutta a few weeks before his departure for the

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the Round Table Conference. I am sorry I have not got a copy of it but I have extracts of the relevant portions of it.

"In the old orthodox Hinduism we have a force which defeated all reforming zeal for many a century and counts on doing so still" ... By political reform, he fears "class tyranny of orthodox Hinduism to be perpetuated."

... ..

"Here is an opportunity for Mr. Gandhi's unequalled powers of persuasion. If he rises to it then he will wipe out all his mistakes of the past; if he fails then the cloud will again overshadow the sunshine of day in the Indian sky."

Mr. Gandhi responded to this offer by a gesture. Soon after this article came to India, he exhorted the pleaders of Ahmedabad to launch prosecutions under the Sarda Act. And after his return from England he showed his eager readiness to "rise to it" by his well-known open activities. No exception can be taken either to the "powers of persuasion" of Lords Meston or those of Mr. Gandhi. But the zeal for "moral and social development" has taken the form of a campaign against orthodox Hinduism and has seized upon an opportunity of enacting this legislation, Section 301, which does away with the

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fundamental rights of protection under personal laws of the Indian subjects of the Crown in their own homes.

CHANGE OF POLICY

19. Let me now take up the point of view of policy. A little historical retrospect is necessary.

EARLY HISTORY

20. In 1781 there was a Committee of the House of Commons. Before this Committee, Mr. Verelst, formerly Governor of Bengal, said in his evidence :—

“The Hindus were more attached to their manners and customs than any other people on the face of the earth. That they would suffer death rather than any indignity to their caste. That from every knowledge he had of the Hindoos, he was persuaded that the Mahommedans, who have usually carried their conquest by the edge of the sword on all former occasions, when they arrived in Hindusthan, found it absolutely necessary to sheath the sword, from a thorough conviction that they would deluge the country with blood before they could convert one Hindu to their laws and religion, and that they therefore wisely became the guardians and protectors of the Hindu religion and that he conceives the country to have been preserved in that state, to the time he left it in 1770. That their religious.

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institutions, and rites, of which they are so tenacious, are not confined to their places of worship, but extend to every occurrence of life."

21. In 1781, "there appeared to be one opinion in Parliament, in the East India Company, and in the nation at large, and it was this, that any attempt to interfere with the religion, the laws, or the local customs of India, must inevitably tend to the destruction of the British power; that the people of India were entitled upon every principle of justice as well in policy, to the full enjoyment of their own religion, laws and customs."

The questions are from Major Scott Warring's Observations (1803) pages li, and vii respectively:—

At page xlix we find:—

"The Hindoo Governments have returned good for evil, for they permit them (the Romanists of the Portugese) the free exercise of their religion, nor are they afraid of the exertions of their missionaries." (p. viii) During debate one eloquent and enlightened member said:—"The antiquity of the Gentoo civilisation, laws, religion and custom, fortified by the invincible attachment which it produced in the people, had in all ages procured the political attention if not the respect, of the most ferocious and barbarous of its various conquerors. However the people were oppressed

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or pillaged, their prejudices in this respect were sacred and inviolate."

(p. ii) There was a proclamation dated the 3rd December 1806, in which we find :—

"the same respect which has been invariably shown by the British Government for their religion and for their customs, will be always continued, and that no interruption will be given to any native whether Hindoo or Mahomedan in the practice of his religious ceremonies."

22. After the passing of the statute of 1781 *, His Majesty referred to it in his Gracious Speech on the 11th July, 1782 :—

"The diligence and ardour with which you" (Lords and Gentlemen) "have entered upon the consideration of the British interests in the East Indies, are worthy of your wisdom, justice and humanity. To protect the persons and fortunes of millions in those distant regions, and to combine our prosperity with their happiness, are objects which amply repay the utmost labour and exertion."

THE NEXT STAGES

23. After the Sati Regulation of Lord Bentinck and before the introduction of the Education policy in 1835, a review of the policy was made by the:

Sec 18 now repealed is a part of this statute.

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Charter of 1833. The people of India was assured in these terms by section 85 of the said Charter :—

“And whereas the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide against any mischiefs and dangers that may arise therefrom, be it therefore enacted, that the said Governor-General in Council shall and he is hereby required, by laws and regulations, to, provide with all convenient speed for the protection of the natives of the said territories from insult and outrage in their persons, religions or opinions.”

24. This section was repealed in ~~or about the~~ year 1854. Lord Dalhousie's Annexation policy with his interference with adoption came in, but with result which need not be repeated. In vain, did Lord Canning issue the following proclamation on the 16th May 1857 :—

“The Government of India has invariably treated the religious feelings of all its subjects with careful respect. The Governor-General in Council has declared that it will never cease to do so. He now repeats that declaration and he emphatically proclaims that the Government of India entertains no desire to interfere with their religion or caste, and nothing has been or will be done by the government to affect the free

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exercise of the observances of religion or caste by every class of people." [Bengal under the L. G's —by C. E. Buckland, page 35-36]

25. Then came the memorable Proclamation of 1858 wherein every word breathed the far-sighted statesmanship and loving heart of a Gracious Queen. I need not dilate on it. But the modern tendency to sidetrack it by special pleading cannot be criticised in a better way than by referring to Ludlow's Policy of the Crown, (1859), especially pages 198-202. All this history is relevant to understand what policy was maintained throughout all the Government of India Acts upto 1919 and why there was a provision for previous sanction for introducing a religious bill into a legislature which in language is what was enacted in 1861. The debates in the Parliament in 1861 over this question show that this history was in the minds of the legislators in framing the India Councils Act of 1861. And I can legitimately take it that the continuance of the said provision up to the last Act, the maintenance of Sections 18 and 12 now repealed up to the Statute Law Revision Act of 1927, were evidences of the continuity of policy, since 1780, of respecting the religions and socio-religious institutions of the Hindoos and the Moslems. As Ludlow puts it :—"We have bound ourselves to do so, by the most solemn sanctions which a free people can give—that of its statu-

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tes ; We cannot be released from that bond, until the people of India choose to discharge us."

EVOLUTION IN THE J. P. C.

26. The next question that turns up—Was this repeal ever contemplated by the Joint Parliamentary Committee ? We find the following passage in paragraph 189 of the Chairman's Draft Report :—

"It was indeed suggested to us that the necessity for the Governor's consent to the introduction of legislation affecting religious rites and usages might prejudice attempts to promote valuable social reforms. We do not think that social reform is likely in the least to suffer by its retention, and we are clearly of opinion that it would be unwise for the present to abandon a safeguard which is already in existence and which might prove very necessary at times of religious or communal disturbance."

27. And Major Attlee in his draft, paragraph 68, quoted with approval the three memorable paragraphs of the Proclamation of 1858 where injunctions about religious belief or worship, impartiality in recruiting public servants, and regard for ancient rights, usages and customs of India have been laid down, and he pleaded—"We think the Indian plea

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is sound that whenever possible these fundamental rights should be embodied in the constitution Act and so to be secured to them beyond the possibility of doubt." In view of this clear evidence, it is hard to believe that the Committee had up their sleeve this repeal.

28. Now, let us turn our attention to the statement of the change of policy in the Joint Parliamentary Committee's Report.

Paragraph 18 of the J. P. C. Report runs as follows :—

18. Secondly, in the sphere of social administration, it is evident that a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions. Englishmen may legitimately claim that for the greater part of her progress India has been mainly indebted to British rule. But from one aspect of Indian life British rule has tended to stand aside; it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. This attitude of non-interference has not indeed, prevented the Government of India from introducing reforms in many matters, to use Lord Lansdowne's words "where demands preferred in

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the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and morality in the world." Yet it must be recognised that, in a country where the habits and customs of the people are closely bound up with their religious beliefs, this attitude, however justifiable it may have been, has sometimes had the result of making it difficult for the Government to carry into effect social legislation in such matters (to name only two obvious instances) as child marriage and the problem of the untouchables. It has become increasingly evident in recent years that the obstacles to such legislation can only be removed by Indian hands. We are under no illusion as to the difficulty of that task, but we are clear that under responsible government alone can it be attempted with any prospect of success."

This statement does not by itself make out the necessity of the repeal now made.

EXAMINATION OF THE STATEMENT FOR CHANGE

29. The statement of the change of policy assumes :—

FOUR ASSUMPTIONS :

I. That there are many matters in Indian life "being inconsistent with individual safety and the public peace and condemned by every system of law and morality in the world", and which therefore need reform. One observation is relevant. Sir Thomas Munroe, who, by the bye, was opposed to liberty of the press in India, had long experience of India from before the Education policy of Macaulay. He observed :—"If civilisation is to become an article of trade between the two countries (India and Europe), I am convinced that this country (Europe) will gain by the import cargo." If things have come down so low as the Committee think, then who is responsible is a matter for deep enquiry.

II. That social legislation has become imperatively necessary. It is not said upon what data this conclusion is arrived at. Secondly, an essential distinction between the meanings of the word "social legislation" in the West and in India has been overlooked. As recently observed by Mr. Justice Varadachari of Madras :—In the West social legislation relates mainly to the subject of material welfare of the population. In India it means social reform within the limits of the Hindu Law. He discussed the difference between "personal law" and "territorial law", and emphasised that "the legisla-

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ture might very well deal with a system of territorial law, but^a was obviously unfitted to deal with personal laws founded on religion."

III. That what is adumbrated in the new Government of India Act is a form of Responsible Government.

IV. That legislation will advance progress. These last two assumptions need closer examination.

RESPONSIBLE GOVERNMENT

30. The Joint Parliamentary Committee have in their Report, Paragraph 20, pointed out the absence in India of the four essential factors of Parliamentary government, and as to the possibility of the future they have themselves said in paragraph 20:—

"It is impossible to predict whether, or how soon a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social policies, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life."

31. Let us now see from the Parliamentary Debates what has been given in this Reform Bill? Shorn of all controversial topics, we find the following uncontradicted statements in the debates on the Bill.

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(i) On the 12th December 1934 the Marquess of Salisbury spoke thus:—"You are giving the supreme control at the centre to a community split from top to bottom in the region of the most profound convictions of mankind cutting, that is to say, at the heart of religion which moves men and has moved men, more deeply than anything else, The Moslem can only vote Moslem. The Hindu will only vote Hindu, and the Moslem representatives returned to the legislature will have no inducement whatever to consider the interests of any of constituents except those who belong to the religion which he professes It is not self-Government at all. There is no means of working self-government on these lines.

... ..

The Communal Award is hated in India by all the Hindus And the real honest truth of the matter is, of course—let us speak out—that the Government were anxious to conciliate Moslem opinion." He then characterised it as a "jerry mandering policy," "a complete constitutional fallacy," "you cannot make a policy on those grounds at all" "nothing which will stand even if you were not ashamed to do it."

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And as to the member of a Provincial Assembly the noble Marquess expressed himself thus :—

“He is to be fenced within the narrowest limits of religious intolerance.”

(ii) In the debate on Lord Fitzalan’s amendment for postponing the promulgation of the Reform in the middle of June 1935 the Noble Marquess again gave out that it was “social reform upon which the new Government would be anxious to embark ”

(iii) On the 26th November 1935, Mr. Petherick, M. P. declared :—

“As a result of this Bill (India Bill) there is only room for a certain amount of social legislation.”

(iv) At a very early stage of the debate in the House of Lords on the 6th April 1933, Lord Lloyd said .—

“Nothing could be worse than a sham democracy or a sham Parliamentary government in India. I was glad to hear the Noble Marquess (Lord Zetland) say that ; because to me there is no greater crime than misleading the people of the East into thinking that we are giving something which in fact we are not.”

32. In the concluding stage of the legislation of this Act, the preamble to the Act of 1919 was kept unaffected but not incorporated. Again, the

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Marquess of Salisbury had to make the anomaly well understood.

It was on the 10th July 1935 :—

"It is a special case because of the very curious proposal of, as it were, keeping in being a preamble when the rest of the Bill is to be repealed. That is, I am sure, unique. Whatever else is unique in the proceedings of Parliament it is unique to keep a preamble by itself when the rest of the Bill has gone. It is a dislocated kind of situation, and it does seem to me it would be more orderly, more regular, to put back the preamble, in so far as it may be put back in its original form, attached to this new bill, rather than keep this disembodied preamble floating about in space without any attachment."

Therefore, the only legitimate inference is that there being no vestige of responsible government in the coming constitution, the tired-out politicians foundered about and gave the coming legislature a free hand in social legislation—a proverbial sop to Cerberus.

PROGRESS

33. This word "progress" is one of the shibboleths of politicians. In its connotation there are several concepts all of which we need not examine. But it must be admitted on all hands that two

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Half a century ago, they wanted to form a community of their own, and were proud to declare that they were "not Hindus." If they want new laws, let them have them. The Government and the legislature have hitherto respected that demand. But why the liberty of the Hindus to follow their own social laws and of the Moslems to follow theirs should be taken away in the name of progress? If anybody likes to go outside those categories, no Hindu at least stands in his way. The principles laid down in the case of *Skinner* versus *Orde* are the time-old principles of the *Gita* :—"Whoever chooses whatever path to worship me, I meet him on that path."

37. To bring in legislative coercion in the social sphere of the Hindus through the artificial and heterogenous body in the coming legislature is to deprive the Hindus of all liberty. Who can say that the 45 lakhs of Hindus who attended the Kumbha melâ last occasion, and 20 lakhs who have attended the Ardha Kumbha this year, will be represented in the legislature? Preposterous!

WELFARE

38. Next as to *welfare*. This question can be fully gone into only by taking up topic after topic. But that will require volumes. Let me take only one example. In the 7th schedule to the Govern-

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ment of India Act, there is in List III Concurrent Legislation List, 6th item—Marriage and Divorce. We may take it that the Woman Movement stands for progressive welfare of women all over the world.. Perhaps we may be charged with bigotry if we ventilate our view-points about this question. We are sufficiently able to stand by our own views. Let me quote some eminent thinkers who carry weight and respect.

.

39. It was about 50 years ago that Bryce pointed out how with the material progress of the world, Woman Movement gained strength "with an increase over all, or nearly all, civilised countries of lunacy, of suicide, and of divorce." What is the position today? Professor Harold Laski writes in 1933—"No lawyer who practises in the Divorce Courts today but know that its proceedings are in a high degree a mixture of farce and hypocrisy; but there is no organised movement among lawyers to end this state of affairs," (p. 143—Democracy in Crisis). Mr. H. G. Wells has confessed in 1932 that divorce "seems entirely dreadful to me" (page 152—After Democracy). Is there any wonder that, when he learnt that as a result of women's propaganda, a sterilisation law was passed in a Canton of Switzerland, Robert Blatchford should exclaim :- "Woman is emancipated; woman is free; woman

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has political power. There is going to be a hectic time for knaves and dastards?"

40. And now, this movement must be welcomed in the name of progress!

MISGIVINGS

41. Thus far, we have examined the question from the point of view of throwing open the Hindu and the Moslem societies for legislative experiment. That is the only change of policy that was envisaged in Paragraph 18 of the J. P. C. Report. Neither that paragraph, nor the reasonings of some prominent members as we have given, felt any necessity that the two sections of the two statutes must needs be repealed. Even then, there were serious misgivings as to the change of policy. The Marquess of Salisbury uttered a note of warning on the 5th April 1933:—

"It is because the Indian Constitution is purely artificial, is established for the first time striking at the very root of all that is most valuable and most vital in Indian life, that there is a difference" (between the English Constitution and the Indian Constitution.)

42. The warning was not heeded to, and no one ever contradicted the noble Lord that his fears were groundless. Two years after, on the 19th June 1935, Bishop of Exeter repeated the warning on the

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floor of the House of Lords—that this reform will bring into India “Chicago gangstermen”. He continued,—

“I do not want for a moment to say that the Indian civilisation is perfect. I am well aware that some noble Lords who know India well could tell us of grave faults, but that civilisation is believed in, and does as a matter of fact hold in check much that is evil. I would welcome every effort to advance that civilisation by mission works or otherwise, but if the civilisation tends to collapse, it will not change over to the West. We will not have a Western world taking the place of the Eastern world. We will have a great world of confusion.”

43. I may be pardoned for saying that for a number of years I had a fear that things were drifting from bad to worse. As a precaution, I appealed to an M. P. I give herewith my appeal and his reply only to show the meaning of the general warnings of the noble Lords quoted above.

I wrote the following letter in 1934 :—17-3-34.

Lt. Col. Sir Arnold Wilson, K.C.I.E., C.M.G., D.S.O., C.S.I., Much Hadham, Hertfordshire, England.

Dear Sir,

I hope you wont mind a few minutes' intrusion upon your time from a stranger from Calcutta writing on a topic to which you have devoted more

A REPEAL

than ordinary attention. I am emboldened to write to you, as I consider that there is not a single utterance or writing which can be compared with your observations in the last paragraph of your article on Indian Constitutional Reform in the 1933 May Number of the English Review, in point of perspicacity of out-look, correctness of diagnosis and statement of the problem. I mean your observations about Indian character and Indian wisdom. I have taken the liberty of addressing you to let you know that. *first*, the whole tendency of the White Paper will be to create parvenu hybrid of imported European *isms* and self-aggrandisement of half-educated Indian wits with which Indian character and Indian wisdom will disdain to fight; *secondly*, for the last 20 years the ruling powers of India have failed to judge Indian character and Indian wisdom resulting in ascendancy of men of dirty sex life, swindlers, adventurers and renegades in the public life of India; *thirdly*, the comparative ease with which these people have gained power and place has raised a delusion of a new India in which they hope to sweep away traditions, honour, chivalry and values of Indian wisdom and character to which they in their lives and conducts cannot come up; and *fourthly*, elections for power without responsibility, votes for parties without principles trying to share in grants, and, unenlightened and helpless

WHAT IT MEANS

electorate tossed between conflicts of interests that will be created by the constitution, will make India a witches' cauldron from which Indian character and Indian wisdom will fly to save themselves, if they can. For nearly a year I have felt the poignancy of the situation, and it is only due to the admiration your aforesaid observations inspired in me that I venture to suggest, if you would kindly take the trouble, to ventilate and impress on the powers that be, (i) not to make any experiment to engraft ideas of parliamentarianism over Indian religious and social ideals,

(ii) not to abandon the policy of the Gracious Queen Victoria in her proclamation of 1858,

(iii) to leave the Indians independent of legislative interference in their society and religious life, and (iv) to encourage the ancient learning to stand above the universities, so that disinterested counsels of really Indian wisdom and true Indian character may maintain Indian standards and values. I am sure, that inspite of the committal of the Home Government in the White Paper, there is ample scope to give play to the policy adumbrated in the above four proposals.

Dear Sir, I beg of you to consider that I have not suggested any new departure. If your countrymen think that the policy hitherto pursued from the days of the East India Company had not been

A REFEAL

fruitful, while history says it was, we Indians can only say that we have fallen on evil times and evil tongues. Surely, surely it is an evil day when men lose faith in their own history.

With apologies for intrusion and kindest regards,

Yours truly, etc.

To which I received the following reply :—

Much Hadham 21

Wynches
Much Hadham,
Hertfordshire
31-3-34

My Dear Sir,

I am indebted to you for your letter of 17th March and I greatly value such expression of opinion. I will continue to do what I can, as a Member of Parliament, to emphasise and ventilate the points you have stressed. I venture to enclose a reprint of an earlier paper of mine, parts of which deal with the same subject and remain,

With the greatest regards

Yours very faithfully,

Sd-Arnold T. Wilson.

44. Then, next, the question arises :—when there are so many misgivings about the conferring of powers over the social field, and when as a matter of fact, no consideration was given to the repeated prayers for religious safeguards, how is it that this

WHAT IT MEANS

repeal of the only safeguard came in as something out of the wood ? I am sure had the Government of India been consulted, they would not have advised it. Then why this repeal ? There has been a continuous propaganda for this repeal.

THE PROPAGANDA

45. I know the Government of India has during the last twenty-five years steered clear of both sides of a propaganda that has been carried on for the same period. I am now going to refer to this propaganda as supplying the fullest explanation of this repeal move which is otherwise inexplicable. In or about the year 1910 two movements were started with regard to India and its aspirations—

I.

A number of writers busied themselves with Warren Hastings Cult not as a mere historical research but with a deep ulterior political motive. Their movement produced a repercussion in the seats of learning, and we find in 1914 in the "Oxford Survey of the British Empire" by J. A. Herbertson M. A., Ph. D., and O. J. R. Howarth, M. A. (page 168).

"Warren Hastings no doubt thought that only on the principles of Machiavelli's Prince could oriental duplicity be circumvented. Still apart from the field of morals, there can be no question"

A REPEAL

regarding the work of Hastings in consolidating the British Rule in India."

No doubt this doctrine preached so openly, had the effect of brushing aside all moral scruples amongst a class of politicians with regard to Indian questions.

II

46. There was another movement started by Sir Valentine Chirol in his "Indian Unrest" (1910)

"There are only two forces that aspire to substitute themselves for British Rule, or at least to make the continuance of British Rule subservient to their own ascendancy. One is the ancient and reactionary force of Brahmanism which having its root in the social and religious system we call Hinduism operates upon a very large section—but still only a section—of the population who are Hindus. The other is a modern and in its essence a progressive force generated by Western Education.

The one is too old ; the other too young. But the most rebellious elements in both have effected a temporary and unnatural alliance on the basis of an illusory "Nationalism" which appeals to nothing in Indian History, but is calculated and meant to appeal with dangerous force to western sentiment and ignorance. It rests with us to break up that unnatural alliance. We may

WHAT IT MEANS

not reconcile aggressive Brahmanism to western civilisation; but we can combat the evil influences for which it stands and which many enlightened Brahmins have since recognised; and we can combat them most effectively by rallying to our sides the better and more progressive elements which, inspite of its many imperfections, western education and the contact with western civilisation have already produced."

Mrs. Besant characterised this work *Indian Unrest* as "malicious and unscrupulous book."

47. But, it cannot but be admitted that the following Siren song of Sir Valentine Chirol has taken root in India,

"We want the western-educated Indian. He has not yet by any means proved his title to speak for the scores of millions of his fellow countrymen who are still living in that undisturbed atmosphere of the Indian middle age We should regard him as the only or the most authoritative mouthpiece of the needs and wishes of the other classes or of the great mass of his fellow countrymen with whom he is often in many ways in less close touch than the Englishmen who live in their midst."

48. This political blandishment had its desired effect on the educated Indian especially upon those who by their conduct were considered as rebels in the

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Hindu society. It is a long shameful story covering all these 25 years. I do not deny that there are a number of men of great parts who fell victims to it. The chief amongst them are poet Tagore and Mr. Gandhi.

49. Within two or three years from the commencement of this propaganda poet Tagore launched a monthly paper in which he preached revolt of the youth, forsaking of husbands, free love as higher than married love, and all the pernicious doctrines of Ibseniana. From this period up to this date he has dipped his pen in venom and it has been a pastime with him to abuse his ancestral religion and its followers. We ought not to take advantage of mere differences of opinion, but what to speak of the man who takes up the cudgel on behalf of the Brahmos when Saraswati idol was eyesore in a Brahmo hostel, and uses the same cudgel in support of Temple-entry agitation—temples where these idols are daily worshipped?

50. It is now well-known that Mr. Gandhi was brought to India after negotiations with General Smutts. Here also one should give every scope to differences of opinion. So we should not refer to his present day activities. But a few undisputable facts about him are well worth remembering. He himself has described marriage of a girl as "being sold to man's lust." This shows that he has unmitigated

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contempt for the sacramental character of marriage. Is there any wonder that his admirers would consider it necessary "to penalise the person who actually officiates in that part of the ceremony which finally renders the marriage tie indissoluble," (Report of the 2nd Select Committee on the Sarda Bill.) We find him again in his anti-Hindu activity in killing a suffering cow by injection. He defended it even after protest with his usual truculence. And the third incident is the clincher of his anti-Hinduism. He advertised his study of the Gita in his lavatory. And this blasphemy has been followed by an impertinent commentary on that sacred book. This may be his "experiments in truth", but he has dared them only counting upon the tolerance of the Hindus. He is not a Hindu, and he has been advertised as a Hindu for the purpose of a political propaganda.

51. It is also well-known to all observers of current history that there have been a number of persons both European and Indian who have been negotiating for the services of these two eminent men in the cause of this political propaganda and the chief amongst them is the Reverend Mr. Andrews.

52. There were also outside agencies at work. One William Archer took pains to depict the Indians as barbarous. The next agent was Miss Mayo whose labours were crowned with success by the passing

of the Sarda Act. The Sarda Act was the culminating point of the first series of feelers which the Chirolites used for measuring the strength of the Hindu Society. The first was the Marriage Act of 1928 of Gour which the Mahomedans rightly treated with contempt. The second feeler was the raising of the age of consent in 1925 which none knew and none requisitioned. The third was the Sarda Act itself, the first condemnation by the educated Indians whom Chirol patted, to lower the Indian social conditions and to open the back door to flappers as leaders of the woman movement. All the time Sir Valentine Chirol was at it. In his last book "India" published in 1925 runs his innate hate of everything Hindu amidst a mass of incorrect informations and perverse interpretations. He had to admit that the "conservative Hindus" loyalty to the British *raj* still remained unshaken," but he did not spare his cynical sneer even at the Maharaja of Durbhanga, because he presided over a "National Conference" (p. 105). He patted the "Brahmo Samaj" and the "Pririthana Samaj," Raja Rammohan Roy and his "church", because they were the first rebels of the Hindu society. He must patronise Sir Rabindra Nath Tagore's pet scheme at Bolpore and write about "genuine interest and sympathy." for it (, which seldom materialise), because consciously or unconsciously Rabindranath has aided his move-

WHAT IT MEANS

ment. It is an unfortunate position, no doubt. But it is this position that some educated Indians are ready to open the back-door is the incentive or the temptation which is at the root of this repeal of these two statutes.

THE OTHER SIDE OF THE PROPAGANDA

53. I would not have taken the pains to advert to this story of selfdebasement, had this picture covered the whole field. But, there is another side of it. As a protest against the Chirol movement Sir George Birdwood in 1913 reminded his countrymen their duty in the following passage :—

“Among the exciting causes of the unrest in India, is the presence there of an ever-increasing number of Europeans of no education, and strong prejudices, who seek a living in India outside the Government services ; and again of educated English people both within the Government services and without them, who, knowing little or nothing of the profound spiritual culture of the Hindus, and of the Muslims, are over-jealous to impose on them our European system of education, which, although excellent for instruction, is deficient as a means of mental discipline, and altogether defective in its appliances of the promotion of culture ; and seek, moreover, to impose

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it on their Indian proteges and friends, not as a superadded accomplishment, but in substitution of their own traditional—[in the case of the Hindus, immemorial] and idiosyncratic literature, arts and religions: in other words, to the destruction of the souls of the Hindus and Muslims of India.

Of the predisposing causes of this unrest the most effective is the "higher education," organised directly by the Government of India, for the training of the medical men, lawyers, professors, etc. an education which unfits a vast number of them, in particular the B. A's and M. A's for duly remunerative employment in India, while our colonists make it hopeless for them to seek employment in the neighbouring and still inadequately populated Commonwealth of Australia and Union of South Africa. Again, the terrible effect of our godless system of public education in India on the Hindus, in destroying their faith in their own religion, without substituting any other in its place, has served seriously to alienate from us the loyalty of the Brahmans, to secure which should be the first and the abiding solicitude of every Englishman in India, The agricultural classes in India are perfectly indifferent as to who rules over them, so they be left to sow and reap in quietness of soul; but the Brahmans are

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their gods and the redeemers and saviours of their souls. The Rajputs, and other reigning Hindu Princes, are loyal from the ground of their hearts towards us, for as much as they have now reigned for about 100 years in unclouded sunshine, under the aegis of England as the paramount power in India but the paramount power over their souls are the Brahmans. And they deserve to be, for it is their wary wisdom, as embodied in the "Code of Manu" and cognate Hindu law books, that has kept India—India of Hindus—together, with absolute communal and religious unity for 3,000 years past, and through ceaseless political revolution, and if their conservative hold on the people of India is ever undermined, and the missionaries of the Catholic Roman Church are not there, prepared to take their place, India will once again rapidly be reduced to even more ghastly chaos than under its Afgan and Mongol conquerors; who for the most part ruled the country by plunderings and ruthless devastations."

The next defender of the Hindu system came in the person of Sir John Woodroffe. His "Is India Civilised" will stand the test of time, and it will be presumptuous on my part to dilate on it. What a pigmy William Archer looks before Sir John Woodroffe! Mr. Fraser Blair gave a dignified reply to

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Miss Mayo. He was in this country for a very few years, but his adoration of the Hindu matron returning home after morning bath in the Ganges he has carried home, and he still adores her.

One distinguished orientalist, Johann Jakob Meyer, as soon as he scented "the politically dangerous" character of Miss Mayo's performance, sat down full 4 years to write out his "Sexual Life in Ancient India" which extorts the admiration of every reader.

It is needless to say that the British rule in India has had its foundation truly and well laid by the continuous labours well over a century and a half of such eminent persons of greater humanity than political exigency can produce—I mean Munro, the military man who never failed to appreciate the Indian civilisation, Sleeman whose Rambles and Recollections amidst his Thugi-hunting will ever remain a human document, Elphinstone who gave up the offer of Governor-Generalship for writing a history of India, Fergusson who came to acquire money but remained to pray for the architecture of India, and a whole galaxy of other men and women. Let us hope that Birdwood, Woodroffe and Meyer will not be the last to join their ranks.

Need I point out that this is a refreshing background of a lurid picture I have disclosed ?

TWO OTHER ARGUMENTS ,

54. There are two other cognate questions which the protagonists of modernism will raise. First—in the modern world, everything is being secularised, and second—progress demands that legislation must regularise the activities of a living society. I should not overlook these two points.

SECULARISATION

• 55. The case of *Bowman* versus the *The Secular Society Ltd.* [1917 (A. C.) 405] is a case in point where secularisation was argued and discussed. It is on the opinion of Lord Chancellor Finlay, in that case, that I can say that if any repeal was necessary, the opinions of the representatives of Indian people on the spirit of the age should have been first had and obtained. The decision in the case was by the Judges other than L. C. Lord Finlay, in favour of secularisation. But only two years after, the Church Assembly Act was passed. We read in the *Encyclopædia Britannica*, 14th Edition, Volume 5, page 674;—"This devolution of legislative power by Parliament to the Assembly (1919) did not destroy the right of Parliament to make laws for the Church of England, but rendered the exercise of that right abnormal and improbable. The right of a spiritual society to be truly autonomous in spiritual matters is obviously patient of large secular control

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in other directions." The provisions of the repealed sections made it possible for Hindu and Moslem societies obviously patient of secular control in other directions. Again two years after in 1921, the Church of Scotland Act was passed to exhibit the model of "a free church in a free state". In fact, the controversy between the Church and the State has not yet been over anywhere in the world.

PHILOSOPHY OF CHANGE

56. A few observations are needed about the second tendency of modern states. It is the fever of legislation. From 1919 to 1930, the British Parliament passed about 750 Acts covering 8,000 pages of print. In the same period, several states of the United States of America passed sixty thousand Acts. It is overdoing a part on the theory of life enunciated by M. Bergson. Bergson's celebrated principle of *elan vital* postulates that there is an impulse driving it to take ever greater and greater risks towards its goal of an ever higher and higher efficiency. This is one of the symptoms of modernism. In his old age M. Bergson seems to revise his views in 1932 (Prof. Muirhead's Review of Bergson's New Book on Morals and Religion in Hibbert Journal, October, 1932). He now thinks that 'dynamic religion' lives, moves and has its being on 'revelations vouchsafed to chosen spirits' that is to say—

WHAT IT MEANS

the Scripture. He asks—"Surely, if there is one thing in which progress has been made in political theory, is it not in the advance from the merely negative conception of liberty which inspired the older advocates of democracy to a more positive conception of it as the realisation through social control of the values inherent in human nature? And how is this possible except on the basis of a positive conception of what these unrealised values really are?" And in the year of Grace 1935, the basis of scripture and its social control in India are to give place to negative conception of liberty? And this is progress!

PROS AND CONS

57. I may be accused of being an alarmist. But the Marquess of Salisbury and the Bishop of Exeter are not. I have no hesitation in admitting that there may be a class of Indian politicals who would welcome this change of policy, as extending to Indians plenary powers of legislation. They are bookish doctrinaires, and do not know India's helplessness. There may be another class of politically-minded Indians who might like to have any opportunity of exploiting India's helplessness, and would fain have their part in the "Coming Struggle for Power" in India? They have got it. If there be a modicum of honest reformers, they ought to

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be satisfied with methods of persuasion and missionary work, and not legislative coercion which this repeal is sure to bring in. And after all, if faith and tradition are looked down upon by the constitution of the land, India is constitutionally pushed into the paths of communism. The door of India is now made wide ajar for the ingress of the Soviet philosophy. That is the wrong done.

WHAT IS ANTICIPATED

58. On the 17th November last, the *Statesman* reprinted an article on "What Next in India?" from the pen of its former editor Mr. Arthur Moore. He has expressed his chuckling satisfaction that "Mr. Gandhi," "is shaking orthodox Hinduism to its foundations with his campaign against "untouchability" and "that a serious preoccupation with internal social problems will set in." Evidently, to make the engineer hoist with his own petard is an achievement of which he and others of his way of thinking may well be proud. But if Hinduism goes to the melting pot, will it be alone?

REMEDY

59. What is the Remedy? I refuse to hear that it is a *chose jugée*. Yet there is at the helm of Indian affairs a master-mind having life-long experience of India and her people. I believe if he

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minds, he can undo the wrong. Let the Hindus be left with their Shastric injunctions, let the Moslems be left with their Koran, and let the legislature make any law for any body who like them. I know that Willingdom can work wonders.

60. Before I conclude, I beg to remind everybody of a passage in Dr. Herman Finer's "Theory and Practice" (page 753) "Injustice" has been done to the vast unseen intricacy called the public which remains a phantom while it is unaffected, but suddenly becomes a frenzied monster when molested." In view of the extreme helplessnesses of the Indian public, I may be allowed to say, that if any frenzy overtakes them, there will be endless suffering and criminal waste of energy and property. Did the members of the Joint Parliamentary Committee consider that, or they left that consideration to future authority having responsibility for law and order ?

Therefore my last submission is that this repeal will have far-reaching mischievous consequences. And what for ? Because, some Indians have exaggerated notions about their own personalities—a by-product of little learning. "The sense of personality begets self-consciousness, and self-consciousness begets pride, and pride begets the desire of interference with others, other nations, other creeds, other classes, other men". (Quarterly Review, July, 1930,

A B E P T A L

page 176). Everybody, Indian or European, who has some desire for the good of India, can ill afford to forget what a religious leader said to the Marquess of Salisbury (speech, dated 3rd July 1935)—"What we want in India is peace. We want tranquillity. That is why we are nervous about what is being done."

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